

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 1st Sess.

S. 2272

To amend title 5, United States Code, to provide for special base rates of pay for wildland firefighters, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Ms. SINEMA

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Wildland Firefighter
5 Paycheck Protection Act of 2023”.

6 **SEC. 2. SPECIAL BASE RATES OF PAY FOR WILDLAND FIRE-
7 FIGHTERS.**

8 (a) IN GENERAL.—Subchapter III of chapter 53 of
9 title 5, United States Code, is amended by inserting after
10 section 5332 the following:

1 **“§ 5332a. Special base rates of pay for wildland fire-**
2 **fighters**

3 “(a) DEFINITIONS.—In this section—

4 “(1) the term ‘firefighter’ means an employee
5 who—

6 “(A) is a firefighter within the meaning of
7 section 8331(21) or section 8401(14);

8 “(B) in the case of an employee who holds
9 a supervisory or administrative position and is
10 subject to subchapter III of chapter 83, but
11 who does not qualify to be considered a fire-
12 fighter within the meaning of section 8331(21),
13 would otherwise qualify if the employee had
14 transferred directly to that position after serv-
15 ing as a firefighter within the meaning of that
16 section;

17 “(C) in the case of an employee who holds
18 a supervisory or administrative position and is
19 subject to chapter 84, but who does not qualify
20 to be considered a firefighter within the mean-
21 ing of section 8401(14), would otherwise qualify
22 if the employee had transferred directly to that
23 position after performing duties described in
24 section 8401(14)(A) for at least 3 years; or

25 “(D) in the case of an employee who is not
26 subject to subchapter III of chapter 83 or chap-

1 ter 84, holds a position that the Office of Per-
2 sonnel Management determines would satisfy
3 subparagraph (A), (B), or (C) if the employee
4 were subject to subchapter III of chapter 83 or
5 chapter 84;

6 “(2) the term ‘General Schedule base rate’
7 means an annual rate of basic pay established under
8 section 5332 before any additions, such as a locality-
9 based comparability payment under section 5304 or
10 5304a or a special rate supplement under section
11 5305;

12 “(3) the term ‘special base rate’ means an an-
13 nual rate of basic pay payable to a wildland fire-
14 fighter, before any additions or reductions, that re-
15 places the General Schedule base rate otherwise ap-
16 plicable to the wildland firefighter and that is ad-
17 ministered in the same manner as a General Sched-
18 ule base rate; and

19 “(4) the term ‘wildland firefighter’ means a
20 firefighter—

21 “(A) who is employed by the Forest Serv-
22 ice or the Department of the Interior; and

23 “(B) the duties of the position of whom re-
24 late primarily to wildland fires, as opposed to
25 structure fires.

1 “(b) SPECIAL BASE RATES OF PAY.—

2 “(1) ENTITLEMENT TO SPECIAL RATE.—Not-
3 withstanding section 5332, a wildland firefighter is
4 entitled to a special base rate at grades 1 through
5 15, which shall—

6 “(A) replace the otherwise applicable Gen-
7 eral Schedule base rate for the wildland fire-
8 fighter;

9 “(B) be basic pay for all purposes, includ-
10 ing the purpose of computing a locality-based
11 comparability payment under section 5304 or
12 5304a; and

13 “(C) be computed as described in para-
14 graph (2) and adjusted at the time of adjust-
15 ments in the General Schedule.

16 “(2) COMPUTATION.—

17 “(A) IN GENERAL.—The special base rate
18 for a wildland firefighter shall be derived by in-
19 creasing the otherwise applicable General
20 Schedule base rate for the wildland firefighter
21 by the following applicable percentage for the
22 grade of the wildland firefighter and rounding
23 the result to the nearest whole dollar:

24 “(i) For GS-1, 42 percent.

25 “(ii) For GS-2, 39 percent.

- 1 “(iii) For GS–3, 36 percent.
 2 “(iv) For GS–4, 33 percent.
 3 “(v) For GS–5, 30 percent.
 4 “(vi) For GS–6, 27 percent.
 5 “(vii) For GS–7, 24 percent.
 6 “(viii) For GS–8, 21 percent.
 7 “(ix) For GS–9, 18 percent.
 8 “(x) For GS–10, 15 percent.
 9 “(xi) For GS–11, 12 percent.
 10 “(xii) For GS–12, 9 percent.
 11 “(xiii) For GS–13, 6 percent.
 12 “(xiv) For GS–14, 3 percent.
 13 “(xv) For GS–15, 1.5 percent.

14 “(B) HOURLY, DAILY, WEEKLY, OR BI-
 15 WEEKLY RATES.—When the special base rate
 16 with respect to a wildland firefighter is ex-
 17 pressed as an hourly, daily, weekly, or biweekly
 18 rate, the special base rate shall be computed
 19 from the appropriate annual rate of basic pay
 20 derived under subparagraph (A) in accordance
 21 with the rules under section 5504(b).”.

22 (b) CLERICAL AMENDMENT.—The table of sections
 23 for subchapter III of chapter 53 of title 5, United States
 24 Code, is amended by inserting after the item relating to
 25 section 5332 the following:

“5332a. Special base rates of pay for wildland firefighters.”.

1 (c) PREVAILING RATE EMPLOYEES.—Section 5343
2 of title 5, United States Code, is amended by adding at
3 the end the following:

4 “(g)(1) For a prevailing rate employee described in
5 section 5342(a)(2)(A) who is a wildland firefighter, as de-
6 fined in section 5332a(a), the Secretary of Agriculture or
7 the Secretary of the Interior (as applicable) shall increase
8 the wage rates of that employee by an amount (determined
9 at the sole and exclusive discretion of the applicable Sec-
10 retary after consultation with the other Secretary) that is
11 generally consistent with the percentage increases given
12 to wildland firefighters in the General Schedule under sec-
13 tion 5332a.

14 “(2) An increased wage rate under paragraph (1)
15 shall be basic pay for the same purposes as the wage rate
16 otherwise established under this section.

17 “(3) An increase under this subsection may not cause
18 the wage rate of an employee to increase to a rate that
19 would produce an annualized rate in excess of the annual
20 rate for level IV of the Executive Schedule.”.

21 (d) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the first day of the first
23 applicable pay period beginning on or after October 1,
24 2023.

1 (e) APPLICABILITY.—Notwithstanding section
2 40803(d)(4)(B) of the Infrastructure Investment and
3 Jobs Act (16 U.S.C. 6592(d)(4)(B)), the salary increase
4 in such section shall not apply to the positions described
5 in such section for service performed on or after the effec-
6 tive date described in subsection (d) of this section.

7 **SEC. 3. WILDLAND FIRE INCIDENT RESPONSE PREMIUM**
8 **PAY.**

9 (a) IN GENERAL.—Subchapter V of chapter 55 of
10 title 5, United States Code, is amended by inserting after
11 section 5545b the following:

12 **“§ 5545c. Incident response premium pay for employ-**
13 **ees engaged in wildland firefighting**

14 “(a) DEFINITIONS.—In this section—

15 “(1) the term ‘appropriate committees of Con-
16 gress’ means—

17 “(A) the Committee on Homeland Security
18 and Governmental Affairs of the Senate;

19 “(B) the Committee on Energy and Nat-
20 ural Resources of the Senate;

21 “(C) the Committee on Agriculture, Nutri-
22 tion, and Forestry of the Senate;

23 “(D) the Committee on Appropriations of
24 the Senate;

1 “(E) the Committee on Oversight and Ac-
2 countability of the House of Representatives;

3 “(F) the Committee on Agriculture of the
4 House of Representatives;

5 “(G) the Committee on Natural Resources
6 of the House of Representatives; and

7 “(H) the Committee on Appropriations of
8 the House of Representatives;

9 “(2) the term ‘covered employee’ means an em-
10 ployee of the Forest Service or the Department of
11 the Interior who is—

12 “(A) a wildland firefighter, as defined in
13 section 5332a(a); or

14 “(B) certified by the applicable agency to
15 perform wildland fire incident-related duties
16 during the period that employee is deployed to
17 respond to a qualifying incident;

18 “(3) the term ‘incident response premium pay’
19 means pay to which a covered employee is entitled
20 under subsection (c);

21 “(4) the term ‘prescribed fire incident’ means a
22 wildland fire originating from a planned ignition in
23 accordance with applicable laws, policies, and regula-
24 tions to meet specific objectives;

25 “(5) the term ‘qualifying incident’—

1 “(A) means—

2 “(i) a wildfire incident, a prescribed
3 fire incident, or a severity incident; or

4 “(ii) an incident that the Secretary of
5 Agriculture or the Secretary of the Interior
6 determines is similar in nature to an inci-
7 dent described in clause (i); and

8 “(B) does not include an initial response
9 (including an initial attack fire) in which a
10 wildfire is contained within 36 hours; and

11 “(6) the term ‘severity incident’ means an inci-
12 dent in which a covered employee is pre-positioned
13 in an area in which conditions indicate there is a
14 high risk of wildfires.

15 “(b) ELIGIBILITY.—A covered employee is eligible for
16 incident response premium pay under this section if—

17 “(1) the covered employee is deployed to re-
18 spond to a qualifying incident; and

19 “(2) the deployment described in paragraph (1)
20 is—

21 “(A) outside of the official duty station of
22 the covered employee; or

23 “(B) within the official duty station of the
24 covered employee and the covered employee is

1 assigned to an incident-adjacent fire camp or
2 other designated field location.

3 “(c) ENTITLEMENT TO INCIDENT RESPONSE PRE-
4 MIUM PAY.—

5 “(1) IN GENERAL.—A covered employee who
6 satisfies the conditions under subsection (b) is enti-
7 tled to premium pay for the period in which the cov-
8 ered employee is deployed to respond to the applica-
9 ble qualifying incident.

10 “(2) COMPUTATION.—

11 “(A) FORMULA.—Subject to subpara-
12 graphs (B) and (C), premium pay under para-
13 graph (1) shall be paid to a covered employee
14 at a daily rate of 450 percent of the hourly rate
15 of basic pay of the covered employee for each
16 day that the covered employee satisfies the re-
17 quirements under subsection (b), rounded to
18 the nearest whole cent.

19 “(B) LIMITATION.—Premium pay under
20 this subsection—

21 “(i) with respect to a covered em-
22 ployee for whom the annual rate of basic
23 pay is greater than that for step 10 of GS-
24 10, shall be paid at the daily rate estab-
25 lished under subparagraph (A) for the ap-

1 applicable rate for step 10 of GS–10 (where
2 the applicable rate is the rate in effect in
3 the same locality that is the basis for a lo-
4 cality-based comparability payment payable
5 to the covered employee under section
6 5304); and

7 “(ii) may not be paid to a covered em-
8 ployee in a total amount that exceeds
9 \$9,000 in any calendar year.

10 “(C) ADJUSTMENTS.—

11 “(i) ASSESSMENT.—The Secretary of
12 Agriculture and the Secretary of the Inte-
13 rior shall assess the difference between the
14 average total amount of compensation that
15 was paid to covered employees, by grade,
16 in fiscal years 2023 and 2024.

17 “(ii) REPORT.—Not later than 180
18 days after the date that is 1 year after the
19 effective date of this section, the Secretary
20 of Agriculture and the Secretary of the In-
21 terior shall jointly publish a report on the
22 results of the assessment conducted under
23 clause (i).

24 “(iii) ADMINISTRATIVE ACTIONS.—
25 After publishing the report required under

1 clause (ii), the Secretary of Agriculture
2 and the Secretary of the Interior, in con-
3 sultation with the Director of the Office of
4 Personnel Management, may, in the sole
5 and exclusive discretion of the Secretaries
6 acting jointly, administratively adjust the
7 amount of premium pay paid under this
8 subsection (or take other administrative
9 action) to ensure that the average annual
10 amount of total compensation paid to cov-
11 ered employees, by grade, is more con-
12 sistent with such amount that was paid to
13 those employees in fiscal year 2023.

14 “(iv) CONGRESSIONAL NOTIFICA-
15 TION.—Not later than 3 days after an ad-
16 justment made, or other administrative ac-
17 tion taken, under clause (iii) becomes final,
18 the Secretary of Agriculture and the Sec-
19 retary of the Interior shall jointly submit
20 to the appropriate committees of Congress
21 a notification regarding that adjustment or
22 other administrative action, as applicable.

23 “(d) TREATMENT OF INCIDENT RESPONSE PREMIUM
24 PAY.—Incident response premium pay under this sec-
25 tion—

1 “(1) is not considered part of the basic pay of
2 a covered employee for any purpose;

3 “(2) may not be considered in determining a
4 covered employee’s lump-sum payment for accumu-
5 lated and accrued annual leave under section 5551
6 or section 5552;

7 “(3) may not be used in determining pay under
8 section 8114 (relating to compensation for work in-
9 juries);

10 “(4) may not be considered in determining pay
11 for hours of paid leave or other paid time off during
12 which the premium pay is not payable; and

13 “(5) shall be disregarded in determining the
14 minimum wage and overtime pay to which a covered
15 employee is entitled under the Fair Labor Standards
16 Act of 1938 (29 U.S.C. 201 et seq.).”.

17 (b) ADDITIONAL PREMIUM PAY AMENDMENTS.—
18 Subchapter V of chapter 55 of title 5, United States Code,
19 is amended—

20 (1) in section 5544—

21 (A) by amending the section heading to
22 read as follows: “**WAGE-BOARD OVERTIME,**
23 **SUNDAY RATES, AND OTHER PREMIUM**
24 **PAY**”; and

25 (B) by adding at the end the following:

1 “(d) A prevailing rate employee described in section
2 5342(a)(2)(A) shall receive incident response premium
3 pay under the same terms and conditions that apply to
4 a covered employee under section 5545c if that em-
5 ployee—

6 “(1) is employed by the Forest Service or the
7 Department of the Interior; and

8 “(2)(A) is a wildland firefighter, as defined in
9 section 5332a(a); or

10 “(B) is certified by the applicable agency to
11 perform wildland fire incident-related duties during
12 the period the employee is deployed to respond to a
13 qualifying incident (as defined in section
14 5545c(a)).”; and

15 (2) in section 5547(a), in the matter preceding
16 paragraph (1), by inserting “5545c,” after
17 “5545a,”.

18 (c) CLERICAL AMENDMENTS.—The table of sections
19 for subchapter V of chapter 55 of title 5, United States
20 Code, is amended—

21 (1) by amending the item relating to section
22 5544 to read as follows:

“5544. Wage-board overtime, Sunday rates, and other premium pay.”;

23 and

24 (2) by inserting after the item relating to sec-
25 tion 5545b the following:

“5545e. Incident response premium pay for employees engaged in wildland firefighting.”.

1 (d) **EFFECTIVE DATE.**—The amendments made by
2 this section shall take effect on the first day of the first
3 applicable pay period beginning on or after October 1,
4 2023.

5 **SEC. 4. REST AND RECUPERATION LEAVE FOR EMPLOYEES**
6 **ENGAGED IN WILDLAND FIREFIGHTING.**

7 (a) **IN GENERAL.**—Subchapter II of chapter 63 of
8 title 5, United States Code, is amended by adding at the
9 end the following:

10 **“§ 6329e. Rest and recuperation leave for employees**
11 **engaged in wildland firefighting**

12 “(a) **DEFINITIONS.**—In this section—

13 “(1) the term ‘applicable Secretary’ means the
14 Secretary of Agriculture or the Secretary of the In-
15 terior, as applicable to a covered employee;

16 “(2) the term ‘covered employee’ means an em-
17 ployee of the Forest Service or the Department of
18 the Interior who—

19 “(A) qualifies as a wildland firefighter
20 based on the definitions of the terms ‘fire-
21 fighter’ and ‘wildland firefighter’ in section
22 5332a(a) (applying the definition of ‘employee’
23 in section 6301(2) in lieu of the definition of
24 ‘employee’ in section 5331(a)); or

1 “(B) is certified by the applicable Sec-
2 retary to perform wildland fire incident-related
3 duties during the period the employee is de-
4 ployed to respond to a qualifying incident; and

5 “(3) the term ‘qualifying incident’ has the
6 meaning given the term in section 5545c(a).

7 “(b) REST AND RECUPERATION LEAVE.—

8 “(1) IN GENERAL.—A covered employee may
9 receive paid rest and recuperation leave following the
10 completion of service in which the covered employee
11 is deployed to respond to a qualifying incident, sub-
12 ject to the policies prescribed under this subsection.

13 “(2) PRESCRIPTION OF POLICIES.—The Sec-
14 retary of Agriculture and the Secretary of the Inte-
15 rior shall, in the sole and exclusive discretion of the
16 Secretaries acting jointly, prescribe uniform policies
17 described in paragraph (1) after consulting with the
18 other applicable Secretary.

19 “(3) CONTENT OF POLICIES.—The policies pre-
20 scribed under paragraph (2) may include—

21 “(A) a maximum period of days in which
22 a covered employee is deployed to respond to a
23 qualifying incident, which shall—

24 “(i) begin on the date on which the
25 covered employee departs from the official

1 duty station of the covered employee and
2 end on the date on which the covered em-
3 ployee returns to the official duty station
4 of the covered employee; and

5 “(ii) be followed by a minimum num-
6 ber of days of rest and recuperation for the
7 covered employee; or

8 “(B) a requirement that prohibits a cov-
9 ered employee from working more than 16
10 hours per day on average over a 14-day period
11 during which the covered employee is deployed
12 to respond to a qualifying incident.

13 “(c) USE OF LEAVE.—

14 “(1) IN GENERAL.—Rest and recuperation
15 leave granted under this section—

16 “(A) shall be used during scheduled hours
17 within the tour of duty of the applicable covered
18 employee established for leave-charging pur-
19 poses;

20 “(B) shall be paid in the same manner as
21 annual leave;

22 “(C) shall be used immediately after a
23 qualifying incident; and

24 “(D) may not be set aside for later use.

1 “(2) NO PAYMENT.—A covered employee may
2 not receive any payment for unused rest and recu-
3 peration leave granted under this section.

4 “(d) INTERMITTENT WORK SCHEDULE.—A covered
5 employee with an intermittent work schedule—

6 “(1) shall be excused from duty during the
7 same period of time that other covered employees in
8 the same circumstances are entitled to rest and re-
9 cuperation leave; and

10 “(2) shall receive a payment as if the covered
11 employee were entitled to rest and recuperation leave
12 under subsection (b).”.

13 (b) TECHNICAL AND CONFORMING AMENDMENT.—
14 The table of sections for subchapter II of chapter 63 of
15 title 5, United States Code, is amended by inserting after
16 the item relating to section 6329d the following:

 “6329e. Rest and recuperation leave for employees engaged in wildland fire-
 fighting.”.

17 **SEC. 5. TRANSFER AUTHORITY.**

18 Notwithstanding section 40803(c)(2) of the Infra-
19 structure Investment and Jobs Act (16 U.S.C.
20 6592(c)(2)), not more than \$5,000,000 of the unobligated
21 balances of amounts made available under the heading
22 “WILDLAND FIRE MANAGEMENT” under the heading
23 “FOREST SERVICE” under the heading “DEPARTMENT
24 OF AGRICULTURE” in title VI of division J of that Act

1 (Public Law 117–58; 135 Stat. 1410) pursuant to section
2 40803(c)(2)(B) of that Act (16 U.S.C. 6592(c)(2)(B))
3 may, as necessary to continue uninterrupted the Federal
4 wildland firefighter base salary increase described in sec-
5 tion 40803(d)(4)(B) of that Act (16 U.S.C.
6 6592(d)(4)(B)), be transferred to and merged with the
7 amounts made available under the heading “WILDLAND
8 FIRE MANAGEMENT” under the heading “DEPARTMENT-
9 WIDE PROGRAMS” under the heading “DEPARTMENT
10 OF THE INTERIOR” in title VI of division J of that
11 Act (Public Law 117–58; 135 Stat. 1393).